

Attorney Docket No.: J3747(C)
Serial No.: 10/592,921
Filed: September 14, 2006
Confirmation No.: 6265

REMARKS

By this Amendment, applicants have amended claim 1:

- (1) to recite that the surfactant system of the hair treatment composition consists essentially of components (a) to (c); and
- (2) to recite that composition additionally comprises 1 to 10% by wt. of a C₁₆ to C₂₂ alkyl chain fatty material selected from the groups consisting of fatty alcohol, alkoxylated fatty alcohol, fatty acid and mixtures thereof (support at page 5, lines 10-28 as well as claim 5, now cancelled).

Accordingly, claims pending are now claims 1-4, 6-9 and 11, as amended.

As discussed in greater detail below, amendment to "consisting essentially of" in claim 1 is to emphasize that compositions of the invention are "hair treatment" compositions (e.g., conditioners) which do not include anionic cleansing surfactant such as is required in U.S. Publication No. 2003/0190302 to Frantz et al. ("Frantz"). Indeed the problem addressed in Frantz is how to obtain stable compositions (which do not form precipitate) in compositions comprising mixtures of anionic and cationic surfactant (¶0021, last three lines; ¶0022, sentence bridging claims 1 and 2 at bottom of page 2). Amendment to recite fatty material is to emphasize that the point of Frantz is to form such stable combination of anionic and cationic merely by proper selection of surfactant (see ¶0033); and that use of fatty acid structurant (e.g., fatty materials) is discouraged or taught away from (see ¶0040).

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More particularly, at page 3 of the Office Action the Examiner has rejected claims 1-7, 9 and 11 under 35 USC §103(a) as allegedly unpatentable over Frantz in view of Pereira. The Examiner addresses the issues raised by the applicants in the previous response, for example:

- 1) Applicants argued that there is no teaching or suggestion in the reference to combine components 1(a) and (c) (the Examiner argues that no working example is required and that, with regard to applicants' combination, there is no adequate showing of advantage);
- 2) Applicants argued that there is no teaching of component 1(c) in the range cited by applicants (again, Examiner argues there is no showing of unexpected results); or
- 3) Applicants argued that dimonium is the only or predominant species in Pereira (Examiner argues that, even if used at lower range, would be expected to have the same properties).

Initially, applicants note that while the arguments previously presented by applicants are still believed valid, these arguments are now presented as "additional distinguishing factors". Thus, even if not alone enough to overcome obviousness (and applicants believe they do alone overcome), when they are added to other arguments presented (amendment to "consisting essentially of" which excludes cleansing anionic surfactant; amendment including fatty material which Frantz teaches away from) they cumulatively and clearly make claims of the invention unobvious over cited art.

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Specifically, applicants note that, as indicated, "consisting essentially of" language (which is intended to exclude cleansing anioncs from the surfactant system) clearly distinguishes from compositions of Frantz which require a combination of anionic and cationic surfactant. Indeed, the problem of the Frantz invention is caused by the combination of anionic and cationic, and the solution is achieved by proper selection of surfactant in view of the presence of these typically incompatible surfactants.

Further, as noted, stability in Frantz is achieved in the absence of fatty acid structurant (¶0044). Thus, the amendment which recites inclusion of fatty material (including fatty acid) clearly differentiates over reference in which inclusion of such material is taught away from.

These latter two amendments thus alone clearly distinguish over the art. When further considering that the reference does nothing to teach or suggest the specific combination and specific amounts of surfactant claimed, it can be seen that the claims are so far away from any teaching or suggestion that obtaining the claims we present (as amended) could only be done with the type of hindsight that has always been prohibited by the patent laws.

Further, under KSR, there is no direction or impetus to prepare the compositions, as amended and, in fact, there is a teaching away from, for example, use of fatty materials.

Finally, as previously noted, claim 8 should be allowed as the fate of claim 8 rises or falls with that of other claims.

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In view of the amendments and discussion above, it is respectfully requested that the Examiner withdraw all rejections of the claims and that claims, as amended, now be allowed.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

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